



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 660**

**[Docket No. 230510-0129]**

**RTID 0648-XC872**

### **Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; 2023-2024 Annual Specifications and Management Measures for Pacific Sardine**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year from July 1, 2023, through June 30, 2024. The proposed action would prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest would be allowed only for use as live bait, in minor directed fisheries, as incidental catch in other fisheries, or as authorized under exempted fishing permits. The incidental harvest of Pacific sardine would be limited to 20 percent by weight of all fish per trip when caught with other stocks managed under the Coastal Pelagic Species Fishery Management Plan, or up to 2 metric tons per trip when caught with non-Coastal Pelagic Species stocks. The proposed annual catch limit for the 2023-2024 Pacific sardine fishing year is 3,953 metric tons. This proposed rule is intended to conserve, manage, and rebuild the Pacific sardine stock off the U.S. West Coast.

**DATES:** Comments must be received by [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2023-0036, by the following method:

- *Electronic Submissions:* Submit all public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-0036 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Taylor Debevec, West Coast Region, NMFS, (562) 619-2052, [Taylor.Debevec@noaa.gov](mailto:Taylor.Debevec@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The CPS FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules in the FMP, are used to manage harvest levels for Pacific

sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*

During public meetings each year, the NMFS Southwest Fisheries Science Center (SWFSC) presents the estimated biomass for Pacific sardine to the Pacific Fishery Management Council (Council), including the Council's CPS Management Team (Team), CPS Advisory Subpanel (Subpanel), and Scientific and Statistical Committee (SSC). The Team, Subpanel, and SSC review the biomass and the status of the fishery, and recommend applicable catch limits and additional management measures. Following Council review and public comment, the Council recommends catch limits and any in-season accountability measures to NMFS. NMFS publishes annual specifications in the **Federal Register** to establish these catch limits and management measures for each Pacific sardine fishing year.

This rule proposes the Council's recommended catch limits for the July 1, 2023-June 30, 2043 fishing year, management measures to ensure that harvest does not exceed those limits, an OFL, and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine.

#### *Recommended Catch Limits*

According to the CPS FMP, the catch limit for the primary directed fishery is determined using the FMP-specified HG formula. This Pacific sardine HG control rule, the primary mechanism for setting the primary directed fishery catch limit, includes a CUTOFF parameter, which has been set at a biomass level of 150,000 metric tons (mt). This amount is subtracted from the annual biomass estimate before calculating the applicable HG for the fishing year. Because the biomass estimate used this year, 27,369 mt, is below that value, the formula results in an HG of zero, and no Pacific sardine are available for the primary directed fishery during the 2023-2024 fishing season. This is the ninth consecutive year that the primary directed fishery is closed.

During the 2019-2020 fishing year, the estimated biomass of Pacific sardine dropped below its 50,000-mt minimum stock size threshold (MSST), which triggered an overfished determination process. Accordingly, NMFS declared the stock overfished on June 26, 2019, and notified the Council of this determination on July 9, 2019. NMFS then worked with the Council to develop a rebuilding plan for Pacific which was finalized on June 24, 2021 (86 FR 33142). The rebuilding plan (Amendment 18 to the CPS FMP) stipulates that total catch limits (*i.e.*, OFL/ABC/ACL) are to be set annually based on annual stock assessments, the control rules in the FMP, and recommendations from the SSC regarding uncertainty in the assessment and OFL. The rebuilding plan also includes the following management measures: (1) closing the primary directed fishery until the biomass reaches or exceeds 150,000 mt; (2) restricting incidental limits in other primary directed CPS fisheries to no more than 20 percent until the biomass reaches or exceeds 50,000 mt; (3) limiting catch in the minor directed fishery to 1 mt per trip per day; and (4) other management measure the Council may recommend. The 2023-2024 proposed harvest specifications are consistent with the management strategy in the rebuilding plan.

This year, there was no new stock assessment because the Council had previously recommended postponing the assessment for a year so the SWFSC could address issues of uncertainty in the previous assessment. As such, the Council's SSC utilized the 2022 update stock assessment ("Update assessment of the Pacific sardine resource in 2022 for U.S. management in 2022-2023"), which the SSC previously agreed satisfied the Terms of Reference for an update assessment and represents the best scientific information available for management of Pacific sardine. The SSC also reviewed new information available since last year, such as a summer 2022 acoustic-trawl total biomass estimate of 69,506 mt and the outcome of the SSC CPS subcommittee meeting (March 20-21, 2023).

Based on the 2022 update assessment and associated estimated age 1+ biomass of 27,369 mt and the control rules in the FMP, the Council recommended, and NMFS is

proposing, an OFL of 5,506 mt, an ABC of 3,953 mt, and an annual catch limit (ACL) of 3,953 mt. There would be a prohibition on commercial Pacific sardine catch, unless it is harvested as part of the live bait, tribal<sup>1</sup>, or minor directed fisheries, as incidental catch in other fisheries, or as part of exempted fishing permit (EFP) activities. The Council also recommended, and NMFS is proposing, an annual catch target (ACT) of 3,600 mt for the 2023-2024 fishing year. For comparison, the ABC/ACL and ACT established last year were 4,274 mt and 3,800 mt, respectively. Although the biomass estimate and OFL are the same this year, the proposed ABC/ACL and ACT for the 2023-2024 fishing year are lower due to uncertainty and staleness of the assessment and biomass estimate.

In conjunction with setting an ACT, the Council also recommended in-season and other management measures to ensure harvest opportunity under the ACT is maintained throughout the year, which are discussed in the next section.

#### *Recommended Management Measures*

The proposed annual harvest limits and management measures were developed in the context of NMFS' July 2019 declaration that the Pacific sardine stock was overfished and June 2021 approval of a rebuilding plan for the stock. Because the biomass remains below the 50,000 mt MSST, the FMP requires that incidental catch of Pacific sardine in other CPS fisheries be limited to an incidental allowance of no more than 20 percent by weight (instead of a maximum of 40 percent allowed when below the CUTOFF but above the MSST).

The following are the proposed management measures and in-season accountability measures for the Pacific sardine 2023-2024 fishing year:

- 1) If landings in the live bait fishery reach 2,500 mt of Pacific sardine, then a 1-mt per-trip limit of sardine would apply to the live bait fishery.

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<sup>1</sup> For the 2023-2024 fishing year, the Quinault Indian Nation has not requested a tribal set-aside, and therefore none is proposed.

- 2) An incidental per-landing limit of 20-percent (by weight) Pacific sardine applies to other CPS primary directed fisheries (*e.g.*, Pacific mackerel).
- 3) If the ACT of 3,600 mt is attained, then a 1-mt per-trip limit of Pacific sardine would apply to all CPS fisheries (*i.e.*, 1) and 2) would no longer apply).
- 4) An incidental per-landing allowance of 2 mt of Pacific sardine would apply to non-CPS fisheries until the ACL is reached.

At the April 2023 meeting, the Council also recommended NMFS approve two EFP proposals requesting an exemption from the prohibition to directly harvest sardine during their discussion of sardine management measures. Those EFP proposals include a total amount of up to 670 mt of the ACL.

All sources of catch including any fishing occurring as part of an EFP, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries and minor directed fishing, will be accounted for against the ACT and ACL.

The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** to announce when catch reaches the incidental limits, as well as any changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS would make announcements through other means available, including emails to fishermen, processors, and state fishery management agencies.

### **Classification**

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

NMFS finds that a 15-day comment period for this action provides a reasonable opportunity for public participation in this action pursuant to Administrative Procedure Act section 553(c) (5 U.S.C. 553(c)), while also ensuring that the final specifications are in place for the start of the Pacific sardine fishery on July 1, 2023. NMFS received the recommendations from the Council that form the basis for this rule after the Council's April 2023 meeting. The Council provided an opportunity for public comment at that meeting, as it does every year before adopting the recommended harvest specifications and management measures for the proceeding fishing year. The subject of this proposed rule—the establishment of the reference points—is considered a routine action, because they are calculated annually based on the framework control rules in the FMP. A prolonged comment period and subsequent potential delay in implementation past the start of the 2023 fishing year would be contrary to the public interest, as it could create confusion in the Pacific sardine industry around current specifications and management measures.

This proposed rule is exempt from review under Executive Order 12866.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is

independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The purpose of this proposed rule is to conserve and rebuild the Pacific sardine stock by preventing overfishing, while still allowing harvest opportunity among differing fishery sectors. This will be accomplished by implementing the 2023-2024 annual specifications for Pacific sardine in the U.S. EEZ off the West Coast. The small entities that would be affected by the proposed action are the vessels that would be expected to harvest Pacific sardine as part of the West Coast CPS small purse seine fleet. In 2014, the last year that a directed fishery for Pacific sardine was allowed, there were approximately 81 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast; 58 vessels in the Federal CPS limited entry fishery off California (south of 39° N. lat.); and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. We do not collect or have access to information about affiliation between vessels or affiliation between vessels and processing entities in this fishery, or receipts in Alaska, Hawaii, or international fisheries, so it is possible that some impacted entities may exceed \$11 million in ex-vessel revenue or another size-standard threshold. Based on available data, the average annual West Coast revenue per vessel for all west coast vessels, including those described above potentially affected by this rule, was well below the threshold level of \$11 million as of 2023; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule is considered to equally affect all of these small entities in the same manner. Therefore, this rule would not create disproportionate costs between small and large vessels/businesses.

The CPS FMP and its implementing regulations require NMFS to annually set an OFL, ABC, ACL, and HG or annual catch target for the Pacific sardine fishery based on



the specified harvest control rules in the FMP applied to the current stock biomass estimate for that year. The derived annual HG is the level typically used to manage the principal commercial sardine fishery and is the harvest level NMFS typically uses for profitability analysis each year. As stated above, the CPS FMP dictates that when the estimated biomass drops below a certain level (150,000 mt), the HG is zero. Because there is again no directed fishing for the 2023-2024 fishing year, this proposed rule will not change the potential profitability compared to the previous fishing year. Additionally, the proposed 2023-2024 ACL is still expected to account for the various fishery sector needs (*i.e.*, live bait, incidental catch in other CPS fisheries, and minor directed fisheries).

The revenue derived from harvesting Pacific sardine is typically only one of the sources of fishing revenue for the commercial vessels that participate in this fishery. As a result, the economic impact to the fleet from the proposed action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and in particular, squid, making Pacific sardine only one component of a multi-species CPS fishery. Additionally, some sardine vessels that operate off of Oregon and Washington also fish for salmon in Alaska or squid in California during times of the year when sardine are not available. The purpose of the incidental catch limits proposed in this action are to ensure the vessels impacted by a prohibition on directly harvesting sardine can still access these other profitable fisheries while still minimizing Pacific sardine harvest.

CPS vessels typically rely on multiple species for profitability because abundance of Pacific sardine, like the other CPS stocks, is highly associated with ocean conditions and seasonality. Variability in ocean conditions and season results in variability in the timing and location of CPS harvest throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same

time. Therefore, as abundance levels and markets fluctuate, the CPS fishery as a whole has relied on a group of species for its annual revenues.

Therefore the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act. There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed action.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 10, 2023.

Samuel D. Rauch, III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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